

HEARING DATE: AUGUST 17, 2009 AT 10:00 P.M.

OBJECTION DEADLINE: AUGUST 6, 2009

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ATTORNEYS FOR SPARTECH CORPORATION AND SPARTECH POLYCOM, INC.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

DELPHI CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 05-44481(RDD)

(Jointly Administered)

**OBJECTION OF SPARTECH CORPORATION AND SPARTECH POLYCOM,  
INC. TO DIP HOLDCO 3, LLC'S ASSUMPTION AND ASSIGNMENT NOTICE**

Spartech Corporation and Spartech Polycom, Inc. (collectively, "Spartech"), by and through undersigned counsel, hereby file this Objection to the *Notice of Assumption and Assignment with Respect to Certain Executory Contracts or Unexpired Lease to be Assumed and*

*Assigned to DIP Holdco 3, LLC Under Modified Plan of Reorganization* (the “DIP Holdco Notice of Assumption and Assignment”), and state as follows:

**BACKGROUND**

1. On October 8, 2005, Delphi Corporation and certain related entities filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code.

2. On July 28, 2009, the Debtors filed that certain *Notice of Filing of Notice of Assumption and Assignment with Respect to Certain Executory Contracts or Unexpired Leases to be Assumed and Assigned to DIP Holdco 3, LLC Under Modified Plan of Reorganization*, wherein the Debtors indicated their intention to assume and assign certain contracts with Spartech Polycom to DIP Holdco 3, LLC.

3. By confirmation of the Debtors’ First Amended Plan of Reorganization, the Debtors assumed a number of material supply agreements with Spartech. Because the Debtors did not provide to Spartech a Cure Amount Notice with respect to each such assumed material supply agreement, Spartech filed its *Notice of Proposed Cure Claims* [Docket No. 13042] in accordance with Section 8.2(b) of the Plan (the “Notice of Proposed Cure Claims”), seeking therein (a) to require that the Debtors cure all defaults under the assumed agreements as a condition to the Debtors’ assumption, and (b) to preserve all claims arising under the assumed agreements which arose prior to the Confirmation Date.

4. At the time of the filing of its Notice of Proposed Cure Claims, Spartech was owed \$1,832,945.29 for products delivered after the Petition Date to the Debtors under various material supply agreements and purchase orders (the “Cure Claims”).

5. The Debtors objected to Spartech's outstanding Cure Claims. *See, Debtors' (I) Omnibus Objection Pursuant to the Confirmation Order, 11 U.S.C. §§ 105(a), 365, and Fed. R. Bankr. P 9014 Regarding Cure Proposals Submitted Under Article 8.2(b) of Debtors' Plan of Reorganization and (II) Request for Order Provisionally Allowing Certain Cure Proposals (the "Omnibus 8.2(b) Cure Objection")*.

6. Spartech responded to and disputed the Debtors' Omnibus 8.2(b) Cure Objection. Specifically, Spartech asserted that Debtors' "Reconciled Cure Amount" of \$0.00 set forth in the Omnibus 8.2(b) Cure Objection was not consistent with Spartech's books and records. *See, Response of Spartech Corporation and Spartech Polycom, Inc. to Debtors' Omnibus 8.2(b) Cure Objection*. Additionally, Spartech advised that its Cure Claims arose from Spartech's delivery, and Debtors' post-petition acceptance, of products delivered to a number of Debtors' plants and locations and the Debtors' refusal to pay for the products so received and accepted.

7. Over the past several months, Spartech has sought out and engaged in discussions with Delphi employees in attempts to resolve the disputes and obtain and expedite payment of post-petition payables. At the request of the Debtors, Spartech provided substantial documentation, including invoices and bills of lading, in support of its Cure Claims.

8. The Debtors continue to purchase products from and make payments to Spartech. Therefore, pending closing of the sale transaction, the amount Spartech's Cure Claim will fluctuate.

9. On July 15, 2009, Spartech filed an Administrative Expense Claim in the amount of \$72,064.13.

10. Currently, and as a result of various post-petition payments and other transactions,

Spartech is owed \$236,453.00.

**OBJECTIONS**

11. Spartech objects to the DIP Holdco Notice of Assumption and Assignment as it does not sufficiently identify the contracts to be assigned, or to whom the various contracts are to be assigned.

12. Spartech also objects to the DIP Holdco Notice of Assumption and Assignment to the extent that it seeks to limit the Cure Amount for all assumed contracts to \$4,581.50.

13. Additionally, objects to the DIP Holdco Notice of Assumption and Assignment because the Debtors have failed to provide adequate assurance of future performance.

14. Spartech reserves the right to modify the amount of Spartech's Cure Claims to reflect transactions that were not included in Spartech's Notice of Proposed Cure, but which also must be cured as a condition to the assumption of Spartech's contracts.

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15. Any reply to this Response shall be provided to the following:

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Dated: August 6, 2009  
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